



## House Bill 5328

### **An Act Concerning Public Work Contract Retainage and Enforcement of the Right to Payment on a Bond**

**Testimony of Commissioner Melody A. Currey**

**General Law Committee**

**March 3, 2016**

The Department of Administrative Services (DAS) offers the following information relating to section 1 of [House Bill 5328](#), “**An Act Concerning Public Work Contract Retainage and Enforcement of the Right to Payment on a Bond.**”

Section 1 of House Bill 5328 proposes to reduce the retainage amount for certain public works contracts from ten percent to five percent. By way of background, the 10% retainage rate was set in 1996 with the goal of providing a greater incentive for contractors to complete projects in a satisfactory and timely manner. It was a Program Review and Investigation recommendation.

Under C.G.S. §49-41b, as it is currently drafted, DAS (and other contracting state agencies) have the authority to withhold up to 10% periodic payments or the final payment due to a contract for work performed on a project.

In practice, DAS retains 7.5%, not 10%, of such payments and has established an early release of retainage program whereby DAS may reduce its retainage over the course of the project. The parameters of the early release of retainage is set forth in Article 28 of the General Conditions of our construction contracts. The General Conditions allow for a graduated decrease of retainage from 7.5% to 2.5% when certain conditions are met by the contractor. Under certain circumstances, the Commissioner can authorize a reduction below 2.5%. The decision to reduce retainage is based on a contractor’s performance evaluation and other factors set forth in the General Conditions.

Additionally, there is a retainage requirement under the Commission on Human Rights and Opportunities (CHRO) statutes:

Sec. 46a-68d. Public works contracts subject to affirmative action requirements. Conditional acceptance by commission. Advance filing of plan. In addition to the provisions of section 4a-60, every public works contract subject to the provisions of part



II of chapter 60 shall also be subject to the provisions of this section. After a bid has been accepted but before a contract is awarded, the successful bidder shall file and have approved by the commission an affirmative action plan. The commission may provide for conditional acceptance of an affirmative action plan provided written assurances are given by the contractor that it will amend its plan to conform to affirmative action requirements. The state shall withhold two per cent of the total contract price per month from any payment made to such contractor until such time as the contractor has developed an affirmative action plan, and received the approval of the commission. Notwithstanding the provisions of this section, a contractor subject to the provisions of this section may file a plan in advance of or at the same time as its bid. The commission shall review plans submitted pursuant to this section within sixty days of receipt and either approve, approve with conditions or reject such plan. When the commission approves an affirmative action plan pursuant to this section, it shall issue a certificate of compliance to the contractor as provided in section 46a-68c.

We release the CHRO-directed retainage when we receive the authorization to do so from the CHRO.

DAS acknowledges that the retainage requirements may be challenging for contractors and has sought to develop administrative solutions, such as the early release of retainage program, to help address some of those concerns. DAS would be happy to participate in any discussions with the stakeholders on this topic.

DAS has no comment on Section 2 of House Bill 5328.

Thank you for allowing us to provide this testimony.